

## Remarks

### The Rejection of Claims 1-3, 6, 15-16, and 18-20 under 35 U.S.C. §102

The Examiner rejected the above-identified claims under 35 U.S.C. §102(a) as being anticipated by U.S. Patent No. 4,588,050 (Urban). To the extent the rejection applies to amended Claims 1, 15, and 18, Applicant traverses the rejection and respectfully requests reconsideration.

Amended Claim 1 recites, “at least one rigid structure attached to said backing plate in at least two places, said structure operatively arranged to form at least one closed loop with said backing plate, wherein said structure is fabricated from friction material.” Urban discloses a brake shoe comprising a retainer holding the friction material to the backing plate. There is no teaching that the retainer is made of friction material. Since the cited reference does not teach each and every element of Claim 1, Claim 1 is not anticipated by the cited reference.

The examiner rejected cancelled Claim 7 as obvious in light of Urban. To support the rejection, the Examiner cited *In re Leshin* as holding that “it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.” The Applicant respectfully disagrees with the Examiner’s characterization of the holding in *Leshin*. The court in *Leshin* states, “mere selection of known plastics to make a container-dispenser of a type *made of plastics prior to the invention*, the selection of the plastics being on the basis of suitability for the intended use, would be entirely obvious.” *In re Leshin*, 1125 U.S.P.Q. 416, 417-418 (CCPA 1960) (emphasis added). The present case is very different from the case in *Leshin*, as there is no teaching, suggestion, or motivation of a friction material retainer made of friction material before the present invention. Thus, Claim 1 would not have been obvious to one having ordinary skill in the art at the time the invention was made.

Further, Urban teaches away from the present invention. Assuming *arguendo* that a *prima facie* case of obviousness has been established by the Examiner, a *prima facie* case of obviousness can be rebutted if one of the cited references teaches away from the claimed invention. See *In re Geisler*, 43 U.S.P.Q. 2d 1362, 1366 (Fed. Cir. 1997). Urban teaches that the retainer extends a distance A into the friction material, preventing the use of the pad beyond that distance. “Base portion 10 of retainer 34 is embedded into liner 8 a distance ‘A’ as shown in FIG. 1A that is deep enough to provide the degree of embedded securement desired yet shallow enough to provide a

useful braking life for liner 8.” (Column 3, lines 29-34) Thus, Urban does not in any way contemplate the use of a retainer made of friction material. The present invention does not suffer the tradeoff taught by the Urban disclosure. The present invention may include a retaining structure that reaches as far into the brake liner as desired, while allowing the article to be used until the liner is worn down to the base plate. Since the cited reference teaches away from the present invention, the present invention is patentable over the cited reference.

Claims 2, 3, 5, and 6 are dependent from Claim 1. Since Claim 1 is patentable over the cited reference, Claims 2, 3, 5, and 6 are patentable over the cited reference.

Amended Claim 15 recites, “at least one rigid closed loop structure emanating from and fixedly secured to said backing plate, wherein said at least one structure is fabricated from friction material.” As stated above with respect to Claim 1, the Urban reference does not teach, suggest, or motivate support structures made from friction material. In fact, the Urban reference teaches away from the present invention. Thus, Claim 15 is patentable over the Urban reference.

Claim 16 depends from Claim 15, which is patentable in light of the cited reference. Thus, Claim 16 is patentable in light of the cited reference.

Amended Claim 18 recites, “at least one rigid closed loop structure emanating from and fixedly secured to said backing plate, wherein said at least one structure is fabricated from friction material.” As stated above with respect to Claim 1, the Urban reference does not teach, suggest, or motivate support structures made from friction material. In fact, the Urban reference teaches away from the present invention. Thus, Claim 18 is patentable over the Urban reference.

Claims 19 and 20 are dependent from Claim 18. Since Claim 18 is patentable over the cited reference, Claims 19 and 20 are patentable over the cited reference.

#### The Rejection of Claims 17 and 21 under 35 U.S.C. §103

The Examiner rejected Claim 7 under 35 U.S.C. §103(a) as being obvious over Urban. Claim 7 has been cancelled, making the present rejection moot.

The Rejection of Claims 17 and 21 under 35 U.S.C. §103

The Examiner rejected Claims 17 and 21 under 35 U.S.C. §103(a) as being obvious over Urban in view of U.S. Patent No. 5,601,174 (Schulz). Applicant respectfully traverses the rejection.

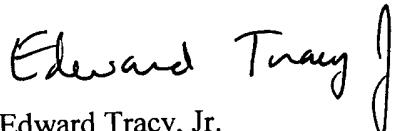
Claim 17 depends from Claim 15, which is patentable in light of the cited references. Thus, Claim 17 is patentable in light of the cited references.

Claim 21 depends from Claim 18, which is patentable in light of the cited references. Thus, Claim 21 is patentable in light of the cited references.

Conclusion

Applicant respectfully submits that the present application is now in condition for allowance, which action is courteously requested.

Respectfully submitted,



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